

## § 704.22

ERMC or as a consultant for the ERMC.

(d) A risk management expert qualifies as independent if:

(1) The expert reports to the ERMC and to the corporate credit union's board of directors;

(2) Neither the expert, nor any immediate family member of the expert, is supervised by, or has any material business or professional relationship with, the chief executive officer (CEO) of the corporate credit union, or anyone directly or indirectly supervised by the CEO; and

(3) Neither the expert, nor any immediate family member of the expert, has had any of the relationships described in paragraph (d)(2) of this section for at least the past three years.

(e) The risk management expert is not required to be a director of the corporate credit union.

[76 FR 23871, Apr. 29, 2011]

### § 704.22 Membership fees.

(a) A corporate credit union may charge its members a membership fee. The fee may be one-time or periodic.

(b) The corporate credit union must calculate the fee uniformly for all members as a percentage of each member's assets, except that the corporate credit union may reduce the amount of the fee for members that have contributed capital to the corporate. Any reduction must be proportional to the amount of the member's nondepleted contributed capital.

(c) The corporate credit union must give its members at least six months advance notice of any initial or new fee, including terms and conditions, before invoicing the fee. For a recurring fee, the corporate credit union must also give six months notice of any material change to the terms and conditions of the fee.

(d) The corporate credit union may terminate the membership of any credit union that fails to pay the fee in full within 60 days of the invoice date.

[76 FR 23871, Apr. 29, 2011]

## 12 CFR Ch. VII (1–1–15 Edition)

### APPENDIX A TO PART 704—CAPITAL PRIORITIZATION AND MODEL FORMS

#### PART I—OPTIONAL CAPITAL PRIORITIZATION

Notwithstanding any other provision in this chapter, a corporate credit union, at its option, may determine that capital contributed to the corporate on or after January 18, 2011 will have priority, for purposes of availability to absorb losses and payout in liquidation, over capital contributed to the corporate before that date. The board of directors at a corporate credit union that desires to make this determination must:

(a) On or before January 18, 2011, adopt a resolution implementing its determination.

(b) Inform the credit union's members and NCUA, in writing and as soon as practicable after adoption of the resolution, of the contents of the board resolution.

(c) Ensure the credit union uses the appropriate initial and periodic Model Form disclosures in Part II below.

#### PART II—MODEL FORMS

Part II contains model forms intended for use by corporate credit unions to aid in compliance with the capital disclosure requirements of § 704.3 and Part I of this Appendix.

##### *Model Form A*

#### Terms and Conditions of Membership Capital Account

NOTE: This form is for use before October 20, 2011 in the circumstances where the credit union has determined NOT to give newly issued capital priority over older capital as described in Part I of this Appendix.

(1) A membership capital account is not subject to share insurance coverage by the NCUSIF or other deposit insurer.

(2) A membership capital account is not releasable due solely to the merger, charter conversion or liquidation of the member credit union. In the event of a merger, the membership capital account transfers to the continuing credit union. In the event of a charter conversion, the membership capital account transfers to the new institution. In the event of liquidation, the membership capital account may be released to facilitate the payout of shares with the prior written approval of NCUA.

(3) A member credit union may withdraw membership capital with three years' notice.

(4) Membership capital cannot be used to pledge borrowings.

(5) Membership capital is available to cover losses that exceed retained earnings and paid-in capital.

(6) Where the corporate credit union is liquidated, membership capital accounts are